

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
JONATHAN D. COOPER  
3 Deputy Attorney General  
State Bar No. 141461  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
5 Telephone: (415) 703-1404  
Facsimile: (415) 703-5480  
6 *Attorneys for Complainant*

7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

12 **MARY MOLLY ALYSON WAGNER**

13 Respondent.

Case No. 2013-481

14 **STATEMENT OF ISSUES**

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
19 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
20 Consumer Affairs (Board).

21 2. On or about June 14, 2012, the Board received an application for licensure as a  
22 registered nurse from Mary Molly Alyson Wagner (Respondent). On or about June 8, 2012,  
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
24 representations in the application. The Board denied the application on August 8, 2012.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Registered Nursing (Board),  
27 Department of Consumer Affairs, under the authority of the following laws. All section  
28 references are to the Business and Professions Code unless otherwise indicated.

## STATUTORY PROVISIONS

4. Section **480** of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

5. Section **2761** of the Code states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an

1 application for a certificate or license for any of the following:

2 . . .

3 (f) Conviction of a felony or of any offense substantially related to the qualifications,  
4 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
5 conclusive evidence thereof.

6 . . .

7 6. Section 2762 of the Code states, in pertinent part:

8 In addition to other acts constituting unprofessional conduct within the meaning of this  
9 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the  
10 following:

11 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
12 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
13 administer to another, any controlled substance as defined in Division 10 (commencing with  
14 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
15 defined in Section 4022.

16 (b) Use any controlled substance as defined in Division 10 (commencing with Section  
17 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
18 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
19 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
20 ability to conduct with safety to the public the practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption, or self-  
22 administration of any of the substances described in subdivisions (a) and (b) of this section, or the  
23 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)  
24 of this section, in which event the record of the conviction is conclusive evidence thereof.

25 . . .

26 7. Section 2765 of the Code states:

27 A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
28 charge substantially related to the qualifications, functions and duties of a registered nurse is

1 deemed to be a conviction within the meaning of this article. The board may order the license or  
2 certificate suspended or revoked, or may decline to issue a license or certificate, when the time  
3 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
4 order granting probation is made suspending the imposition of sentence, irrespective of a  
5 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person  
6 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict  
7 of guilty, or dismissing the accusation, information or indictment.

#### 8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

##### 9 (Criminal Conviction)

10 8. Respondent's application is subject to denial under Code sections 480(a)(1) and  
11 2761(f) in that she has been convicted of a crime substantially related to the qualifications,  
12 functions or duties of a registered nurse. The circumstances are as follows:

13 9. On or about December 9, 2010, in United States District Court, Northern District of  
14 California, case number CR-10-00444-001 JCS, Respondent was convicted of having violated 36  
15 U.S.C. 1004.23(a)(1) and/or 35 C.F.R. section 4.23(a)(1) (driving under the influence of alcohol).  
16 The conviction was based on an incident which occurred on April 24, 2010, during which  
17 Respondent drove a vehicle with a blood alcohol level in excess of the legal limit. Respondent's  
18 blood alcohol level was approximately .11%. Respondent was also in possession of 8.9 grams of  
19 marijuana, three foil-wrapped chocolates suspected to contain THC, a glass pipe, a viagra tablet  
20 and 12 adderall tablets.

#### 21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

##### 22 (Alcohol/Drug-Related Act and Conviction)

23 10. Respondent's application is subject to denial under Code sections 480(a)(1), 2761(a)  
24 and 2762, subsections (b) and (c), in that she has been convicted of a crime involving the  
25 consumption or self-administration of alcohol and has used alcohol in a manner dangerous to  
26 herself, other persons and the public. The circumstances are as follows:

27 11. On or about December 9, 2010, in United States District Court, Northern District of  
28 California, case number CR-10-00444-001 JCS, Respondent was convicted of having violated 36

1 U.S.C. 1004.23(a)(1) and/or 35 C.F.R. section 4.23(a)(1) (driving under the influence of alcohol).  
2 The conviction was based on an incident which occurred on April 24, 2010, during which  
3 Respondent drove a vehicle with a blood alcohol level in excess of the legal limit. Respondent's  
4 blood alcohol level was approximately .11%. Respondent was also in possession of 8.9 grams of  
5 marijuana, three foil-wrapped chocolates suspected to contain THC, a glass pipe, a viagra tablet  
6 and 12 adderall tablets.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 (Possession of Drugs)

9 12. Respondent's application is subject to denial under Code sections 480(a)(3)(A),  
10 2761(a) and 2762(a) in that she unlawfully possessed controlled substances and/or dangerous  
11 drugs. The circumstances are as follows:

12 13. On or about April 24, 2010, Respondent unlawfully possessed marijuana, viagra and  
13 adderall, all of which are controlled substances and/or dangerous drugs.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Denying the application of Mary Molly Alyson Wagner for licensure as a registered  
18 nurse;

19 2. Taking such other and further action as deemed necessary and proper.

20 DATED: December 13, 2012

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant